



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 29, 2022

IN THE MATTER OF:

Appeal Board No. 621331

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determinations, holding the claimant ineligible to receive benefits, effective beginning March 9, 2020, on the basis that the claimant was not available for employment and holding the claimant ineligible to receive benefits, effective beginning September 2, 2020, on the basis that the claimant was not available for employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed February 4, 2022 (), the Administrative Law Judge modified the initial determinations, holding the claimant ineligible to receive benefits, effective March 9, 2020, on the basis that the claimant was not available for employment and the initial determinations holding the claimant ineligible to receive benefits, effective September 2, 2020, on the basis that the claimant was not available for employment, to be effective March 9, 2020, through June 22, 2020, and September 2, 2020, through October 24, 2021 (inadvertently set forth as October 24, 2020), and, as so modified, sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it modified and sustained the initial determinations.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a full-time caretaker for a

municipal agency for seven years. She worked from 6:00 a.m. to 4:30 p.m., Tuesday through Friday.

Due to the COVID-19 pandemic, the claimant's children's schools were closed in March 2020, and resumed until the end of the school year with remote learning. The employer granted the claimant leave through June 2020 because she had no childcare. The claimant was able to return to work on June 22, 2020, when she secured childcare from a friend. The claimant worked until September 2, 2020, when her children's schools reopened for remote learning.

The claimant chose to supervise her children's remote learning because they were too young to be left alone. The claimant requested an additional leave of absence, but the employer declined her request. As a result, the claimant was unable to work as of September 2, 2020, and she remained unavailable to work through October 24, 2021, when her children's schools reopened for in-person learning.

The claimant applied for unemployment insurance benefits on August 6, 2020, and her claim was made effective as of March 9, 2020. Her benefit rate was set at \$396.00 per week and the claimant received the unemployment insurance benefits thereafter.

The Department of Labor redetermined the claimant's eligibility and issued initial determinations that found that the claimant was unavailable for employment effective beginning March 16, 2020, indefinitely, and effective beginning September 2, 2020, indefinitely. The initial determinations each bore a "date mailed" of October 18, 2021. There were no initial determinations of willful misrepresentation associated with these redeterminations.

OPINION: Pursuant to Labor Law § 597 (3), "[a]ny determination regarding a

benefit claim may, in the absence of fraud or [willful] misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information."

The credible evidence fails to establish that the Department of Labor possessed the necessary jurisdiction to allow for a review of the benefit claims at issue for any period prior to October 18, 2020. In so determining, we note that the Department of Labor's redeterminations were issued on October 18, 2021, and there are no associated allegations of fraud or willful

misrepresentation. Hence, we find that in the absence of fraud or misrepresentation, we may only review these determinations for the period of October 18, 2020, and thereafter.

We further note that the initial determination that the claimant was unavailable for employment, effective beginning March 16, 2020, was modified at hearing to be effective for the period from March 16, 2020, through June 22, 2020, only. Accordingly, we conclude that there is no jurisdiction to determine availability from March 16, 2020, through June 22, 2020, and the initial determination of availability, as modified to be effective March 16, 2020, through June 22, 2020, is therefore overruled.

The further availability determination, as modified to be effective September 2, 2020, through October 24, 2021, is also devoid of any contention of fraud or willful misrepresentation. Accordingly, we further conclude that this availability determination must be modified and is so modified to be effective October 18, 2020, through October 24, 2021.

The credible evidence further establishes that the claimant was admittedly unavailable for employment from October 18, 2020, through October 24, 2021, because she did not have childcare while her children were home and learning remotely. She did not become available for employment until her children's schools reopened for in-person learning on October 25, 2021. Accordingly, we conclude that the claimant was ineligible for unemployment insurance benefits, effective October 18, 2020, through October 24, 2021, due to being not available for employment.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is modified as follows and, as so modified, is affirmed.

The initial determination, holding the claimant ineligible to receive benefits, as modified to be effective March 16, 2020, through June 22, 2020, on the basis that the claimant was not available for employment, is overruled.

The initial determination, holding the claimant ineligible to receive benefits, as modified to be effective September 2, 2020, through October 24, 2021, on the basis that the claimant was not available for employment, is modified to be effective October 18, 2020, through October 24, 2021, and as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER